

FEB 05 2008

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Attorneys for Defendant, Cross-Claimant and
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9ZP491W

IN THE DISTRICT COURT OF GUAM

TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

and

INCHCAPE SHIPPING SERVICES GUAM,
LLC,

Plaintiff in Intervention,

vs.

MARWAN SHIPPING & TRADING CO.,
FIVE SEAS SHIPPING CO., LLC, and S.J.
GARGRAVE SYNDICATE 2724,
in personam,

Defendants.

AND CROSS-CLAIMS, COUNTERCLAIM,
AND CLAIM IN INTERVENTION

Case No.: 1:06-CV-00011

**S.J. GARGRAVE SYNDICATE 2724'S
MOTION FOR DEFAULT JUDGMENT
AGAINST NAVIGATORS INSURANCE
CO., DBA NAVIGATORS
PROTECTION & INDEMNITY**

[NO ORAL ARGUMENT REQUESTED]

Complaint Date: April 19, 2006
Trial Date: May 12, 2008

1 Third-party Plaintiff S. J. GARGRAVE SYNDICATE 2724 ("Gargrave") hereby moves
2 this Court for a default judgment in the amount of \$800,000 against Third-Party Defendant
3 Navigators Insurance Co. dba Navigators Protection & Indemnity ("Navigators") pursuant to
4 Fed. R. Civ. P. Rule 55(b)(2), and based upon the following facts of record:

5 1. On April 19, 2006, Plaintiff United States of America sued, *inter alia*,
6 Gargrave in this Court, claiming damages for pollution cleanup and removal costs, as well as
7 attorney's fees, interest and other expenses pertaining to the entry of the Vessel M/V AJMAN 2
8 into the port of Guam. [Doc. No. 1].

9 2. On November 30, 2006, Plaintiff in intervention Inchcape Shipping
10 Services Guam LLC ("Inchcape") filed its Amended Complaint In Intervention against, *inter*
11 *alia*, Navigators. This Court issued its Certificate of Service Re Summons and the Amended
12 Complaint In Intervention as to Navigators on December 6, 2006 and December 7, 2006
13 pursuant to Fed. R. Civ. P. 4(f)(2)(B).

14 3. Navigators appeared through Attorney Thomas C. Sterling and the pro
15 hac vice applications of attorneys of Ellen G. Lauck and Stanley L. Gibson. [Doc. Nos. 118
16 and 119]. Lauck and Gibson were admitted as Navigators attorneys of record by Court order on
17 April 12, 2007. [Doc. No. 126].

18 4. On November 2, 2007 this Court granted Navigators' motion to dismiss
19 the Amended Complaint in Intervention of Inchcape without prejudice. [Doc. No. 142]. At no
20 time did Navigators request of this Court for entry of a final judgment of dismissal from this
21 lawsuit pursuant to Rule 54(b) Fed. R. Civ. P. Accordingly, under Rule 54(b) Fed. R. Civ. P.,
22 the order of dismissal remained interlocutory and did "not terminate the action" against
23 Navigators, who remains a party to this litigation and over whom this Court still retains
24 jurisdiction.

25 5. On November 28, 2007, this Court granted Gargrave's motion for leave
26 to file a third party complaint against Navigators. [Doc No. 149].

27 6. Gargrave served its First Amended Third-Party Complaint against
28 Navigators by delivery of same to Thomas C. Sterling on November 30, 2007 and mailing the

1 same to Stanley Gibson by U.S. mail, postage prepaid on same date. *See Declaration of*
2 *Thomas M. Tarpley dated January 23, 2008.* [Doc. No. 153].

3 7. More than twenty (20) days elapsed after service of the First Amended
4 Third-Party Complaint yet Navigators failed to plead or otherwise defend as provided by the
5 Federal Civil Rules. *Id.* On January 29, 2008 the Clerk of Court entered Navigators' default .
6 [Doc. No. 154].

7 8. In November of 2007, Gargrave entered into a settlement agreement with
8 Plaintiff to settle the claims for \$800,000. See Declaration of Forrest Booth of amounts due in
9 support of entry of default judgment, filed contemporaneously herewith.

10 ARGUMENT

11 Gargrave's First Amended Third-Party Complaint alleged, in paragraph 10 thereof, that
12 "Navigators, and not Gargrave, should pay all or most of the sums the United States is seeking
13 herein." [Doc. No. 150]. Gargrave alleged causes of action against Navigators for Equitable
14 Indemnity, Contribution, Tort of Another, and Negligence. *Id.* Gargrave's First Amended
15 Complaint against Navigators prayed for entry of judgment against Navigators "in the event
16 Gargrave makes any settlement with the Plaintiff United States." *Id.*

17 Gargrave has now settled with Plaintiff for the amount of \$800,000, a sum certain
18 amount.

19 Under Rule 54(b)(2) a party is entitled to a default judgment if there has been an entry of
20 default against the party who has failed to plead or otherwise defend a complaint against it. If
21 the damages are a sum certain, the claimant may file an affidavit of the amount due in lieu of
22 the need of a formal evidentiary hearing. Dundee Cement Co. v. Howard Pipe & Concrete
23 Products, Inc., 722 F.2d 1319, 1323 (7th Cir. 1983).

24 Because Navigators has previously appeared in this action, Navigators is entitled to three
25 days written notice of the application for judgment pursuant to Rule 55(b)(2) Fed. R. Civ. P.
26 Accordingly, Navigators' attorneys of record is being served with written notice of this
27 application upon the filing of same. Gargrave therefore requests this Court not act on this
28 application until three days have elapsed from the service of this application upon Navigators'

1 local counsel, Thomas C. Sterling. A proposed Order of Default is being electronically filed
2 contemporaneously herewith.

3 Dated this 5th day of February, 2008.

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7 THOMAS McKEE TARPLEY
8 Attorney for Defendant, Cross-Claimant
9 and Counterclaimant S. J. GARGRAVE
10 SYNDICATE 2724
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1 **CERTIFICATE OF SERVICE**

2 I, Dorothea Quichocho, hereby certify pursuant to Rule 5(d) Fed. R. Civ. P. that on
3 February 5, 2008, I caused to be served a true and correct copy of S.J.
4 **GARGRAVE SYNDICATE 2724'S MOTION FOR DEFAULT JUDGMENT AGAINST**
5 **NAVIGATORS INSURANCE CO., DBA NAVIGATORS PROTECTION &**
6 **INDEMNITY [NO ORAL ARGUMENT REQUESTED]**, to the following:
7

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19 *Attorneys for Defendants and Cross-Defendants Marwan Shipping & Trading Co.;*
20 *Five Seas Shipping Co., LLC; and Al-Buhaira National Insurance Company*

22 Thomas C. Sterling, Esq.
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25 *Attorneys for Defendant Navigators Insurance Co., dba*
26 *Navigators Protection & Indemnity*

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7 *Attorneys for Third Party Defendant Inchcape Shipping Services Guam LLC*

8 Dated this 5th day of February, 2008.

9 
10 DOROTHEA QUICHOCHO